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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 861

SAM WILNER, IN HIS OWN RIGHT AND AS ADMINISTRATOR of the Estate of Meyer Wilner, Deceased, petitioner

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court rendered a memorandum opinion (R. 8–12) which is unreported. The opinion of the Circuit Court of Appeals (R. 21–26) is reported in 68 F. (2d) 442.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 12, 1934. (R. 26.) The petition for a writ of certiorari was filed March 14, 1934. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Sections 5 and 17 of the Economy Act of March 20, 1933, c. 3, 48 Stat. 8, 9, 11, validly deprived the courts below of jurisdiction to entertain a suit against the United States on a contract of yearly renewable term insurance issued under the War Risk Insurance Act of 1917 (Act of October 6, 1917, c. 105, 40 Stat. 398).

STATUTES INVOLVED

These are set forth in the Appendix, *infra*, p. 9.

STATEMENT

The petitioner commenced this suit in the District Court April 28, 1933 (R. 2), in his own right and as administrator of the estate of Meyer Wilner, deceased, to recover total permanent disability and death benefits alleged to be due under a contract of yearly renewable term insurance issued to Meyer Wilner during service in the United States Army between September 19, 1917, and March 31, 1919. (R. 1–6.) Meyer Wilner died intestate May 15, 1929. (R. 2.)

The petition as amended (R. 12) alleged further: that the insured became totally and permanently disabled on April 15, 1919 (R. 4); that a demand for insurance benefits was made by the insured November 15, 1928, and by the petitioner May 17, 1929 (R. 4); that no decision was reached by the Veterans' Administration until April 7, 1933; that then

the petitioner was informed that by reason of Section 17 of the Act of March 20, 1933, the Veterans' Administration was without authority to take any action on the claim (R. 5). The petition alleged that the said Act was unconstitutional and void as an attempted delegation to the President of legislative powers contrary to Section 1, Article I of the Constitution, and also that it deprived petitioner of property without due process of law contrary to the Fifth Amendment. (R. 5.)

The respondent filed a general demurrer to the petition (R. 7) which was sustained by the District Court (R. 8–12) and the suit dismissed with costs for want of jurisdiction (R. 13). The Circuit Court of Appeals reversed as to the costs, and directed a dismissal for want of jurisdiction without costs. (R. 21–26.)

ARGUMENT

I

Jurisdiction was refused below because of Sections 5 and 17 of the Economy Act of March 20, 1933, *infra*, pp. 9–10. The effect of the Act upon existing unconverted yearly renewable term insurance contracts [1] is twofold:

[1] Such insurance should not be confused with the permanent converted insurance policies issued subsequently to the war to veterans who elected to convert their temporary war-time insurance into a permanent form of Government insurance. The Act of March 20, 1933, does not affect the latter form of insurance.

(1) By Section 17 all laws granting or relating to such insurance are repealed, and no new payments under such insurance may be made, except (in substance) upon claims matured before the Act and on which payments had been started, or which were at that date in litigation. The repeal includes the Act under which suits on such policies have hitherto been brought in District Courts. World War Veterans Act, 1924, Sec. 19, as amended by Act of July 3, 1930, c. 849, 46 Stat. 991, 992, Sec. 4, *infra*, p. 9.

(2) By Section 5 the decisions of the Administrator of Veterans' Affairs are made "final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision."

The claims of the petitioner and his decedent did not fall within the saving clause of Section 17, since they had neither been approved nor sued on by March 20, 1933. They were, therefore, denied by the Administrator of Veterans' Affairs under that section. (R. 5.) Jurisdiction was refused below under both sections. (R. 9–10, 23–24.)

That this is the meaning of the Act is clear. The question is as to its validity as here applied. The suit below was against the United States, directly. It claimed a money judgment. (R. 6.) Prior to 1933 the Congress had consented to such actions. World War Veterans Act, 1924, Sec. 19, as amended, *infra*, p. 9. That consent is now

withdrawn. Congress clearly had the power to withdraw it. *United States* v. *Clarke*, 8 Peters 436, 444; *United States* v. *Guthrie*, 17 How. 284; *Beers* v. *Arkansas*, 20 How. 527; *DeGroot* v. *United States*, 5 Wall. 419, 431–433; *United States* v. *Eckford*, 6 Wall. 484, 487–491; *Gordon* v. *United States*, 7 Wall. 188, 195; *Hans* v. *Louisiana*, 134 U.S. 1; *Schillinger* v. *United States*, 155 U.S. 163; *Price* v. *United States*, 174 U.S. 373; *Kansas* v. *United States*, 204 U.S. 331, 341; *Kawananakoa* v. *Polyblank*, 205 U.S. 349; *United States* v. *Heinszen & Co.*, 206 U.S. 370, 386–388, 391; *Illinois Central R.R. Co.* v. *Public Utilities Comm'n.*, 245 U.S. 493, 504–505; *United States* v. *Babcock*, 250 U.S. 328, 331; *Johnson* v. *Emergency Fleet Corporation*, 280 U.S. 320.[2]

But it is said the Act not only deprives courts of jurisdiction, but has wholly confiscated plaintiff's rights, by repealing all the laws that grant them. That seems indeed to be the meaning of Section 17, and is so stated in the regulations. Veterans' Regulation No. 8, Par. V, *infra*, p. 10.

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[2] The reservation on this point, expressed in *Graham & Foster* v. *Goodcell*, 282 U.S. 409, 430–431, was, as we understand it, on the ground that some of the actions there involved were "against the collector individually and were based upon the right to recover as against him by reason of his illegal acts." We do not understand that the Court there intended to cast doubt upon the power of Congress to open or close the courts of the United States, in its discretion, to direct suits for money judgments against the United States as sole defendant.

In *White* v. *United States,* 270 U.S. 175, this Court determined that the rights of beneficiaries under these war risk term contracts were subject to amendment by the Congress. It was there said (p. 180):

> The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good. It was a new experiment in which changes might be found necessary, or at least, as in this case, feasible more exactly to carry out his will. If the soldier was willing to put himself into the Government's hands to that extent no one else could complain. * * *

In 1933, more than fourteen years after the Armistice, Congress determined by this Act that no further payments should be made of claims upon term policies which had neither been allowed, nor put in suit, nor converted to permanent Government insurance, before the Act was passed. The reasons for its action are not here important. By the same Act it closed the courts of the United States to further suits upon such claims. Whatever its power was over the contracts, directly, it clearly had the power to close the courts. Having done that before the suit was brought, it follows

that the District Court had no jurisdiction of the case, and both the courts below have properly so held.[3]

The Circuit Court of Appeals for the Fifth Circuit has reached the same result.[4] *Lynch* v. *United States*, 67 F. (2d) 490, petition for certiorari filed March 12, 1934, No. 855.

II

Petitioner insists further that the Act is void because it delegates legislative power to the President. This claim relates not to the provisions concerning yearly renewable term insurance, as to which the Act is wholly definite, but to the provisions as to pensions and other compensation, particularly Sections 1 to 4. It is, however, clear that the petitioner's sole claim is under the yearly renewable term insurance policy on which he sues, and he is not affected by the other sections of the Act.

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[3] Section 35 of the Independent Offices Appropriation Act, 1935, enacted March 28, 1934, is inapplicable to the present case because it is not one in which "maturity of the insurance contract had been determined by the Veterans' Administration prior to March 20, 1933."

[4] The contrary decision of the District Court for the district of Idaho in *Harris* v. *United States*, 5 F. Supp. 368, is based on the view that suits on war risk policies are brought under the Tucker Act (Judicial Code, Sec. 24 (20), U.S.C., Title 28, Sec. 41 (20)) which, of course, was not repealed by the Economy Act of 1933. But this understanding is erroneous. *United States* v. *Pfitsch*, 256 U.S. 547, 552–553; *Crouch* v. *United States*, 266 U.S. 180, 8 F. (2d) 435; *United States* v. *McGovern*, 299 Fed. 302, appeal dismissed, 267 U.S. 608.

CONCLUSION

The case is admittedly important. But the result below seems clearly right, and agrees with that in the Fifth Circuit. Conflict of decision does not seem likely to arise. The petition should be denied.

J. CRAWFORD BIGGS,
Solicitor General.

WILL G. BEARDSLEE,
Director, Bureau of War Risk Litigation.

WILBUR C. PICKETT,
RANDOLPH C. SHAW,
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Special Assistants to the Attorney General.

APRIL 1934.

APPENDIX

STATUTES AND REGULATIONS

Section 19 of the World War Veterans' Act, 1924, as amended by the Act of July 3, 1930, c. 849, 46 Stat. 991, Sec 4:

> In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the district court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. * * *
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> * * * * *
>
> The term "claim" as used in this section, means any writing which alleges permanent and total disability at a time when the contract of insurance was in force, or which uses words showing an intention to claim insurance benefits and the term "disagreement" means a denial of the claim by the director or some one acting in his name on an appeal to the director. * * *

Economy Act of March 20, 1933, c. 3, 48 Stat. 8, 9, 11, Secs. 5 and 17:

> Sec. 5. All decisions rendered by the Administrator of Veterans' Affairs under the provisions of this title, or the regulations

issued pursuant thereto, shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision.

Sec. 17. * * * all laws granting or pertaining to yearly renewable term insurance are hereby repealed, * * *. *Provided*, That nothing contained in this section shall interfere with payments heretofore made or hereafter to be made under contracts of yearly renewable term insurance which have matured prior to the date of enactment of this Act and under which payments have been commenced, or on any judgment heretofore rendered in a court of competent jurisdiction in any suit on a contract of yearly renewable term insurance, or which may hereafter be rendered in any such suit now pending: * * *.

Pursuant to the authority vested by the provisions of the Act of March 20, 1933, *supra*, the President of the United States issued an Executive Order entitled Veterans' Regulation No. 8, paragraph V of said order being as follows:

> Except as stated above, no payments may hereafter be made under contracts of yearly renewable term insurance (including automatic insurance) and all pending claims or claims hereafter filed for such benefits shall be disallowed.

U. S. GOVERNMENT PRINTING OFFICE: 1934